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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/690,414

10/21/2003

Kevin T. Grandey

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EXAMINER

JOHNSON, JERROLD D

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

06/19/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,414

Applicant(s)

GRANDEY, KEVIN T.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) 59-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 and 72-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/21/03, 1/2/04, 2/17/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 59-63 drawn to the non-elected species shown in Fig. 10 and non-elected method claims 64-71 are withdrawn from further consideration pursuant to 37 CFR 1.142(b). Election was made **without** traverse in the reply filed on 25 May 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 15-26, 31, 47-58 and 72-75 are rejected under 35 U.S.C. 102(a), or alternatively, under 35 U.S.C. 102(e)(1), as being anticipated by Mallik et al. US 2002/0153273.

Mallik in Fig. 2 discloses the claimed invention including the slider having a stylus. The profile is disposed on the package in the variety of ways set forth in claims 15-22 and 47-54. With respect to the amplification provided by the structure of the package, the package of Mallik would inherently provide this amplification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-14 and 32-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mallik et al. US 2002/0153273 in view of Examiner's Official Notice.

Re claim 2 and 32, the claim limitation of the audible message being "indicative of a feature of said package" is considered to merely set forth in slightly greater detail the intended use for the package. This intended use is similar in scope to "relating the audible message to a feature of the package." The content of the audible message is considered to be data, or non-functional descriptive material, and accordingly, this recitation does not further limit the structure of the package.

Re claims 3-5 and 33-36, Mallik is inherently capable of being used with these products that are set forth further defining the intended use of the invention. Additionally, regarding claim language relating non-functional descriptive material (the audible message) to the intended use (the contents) of a package does not further limit the structure of the package.

Re claims 6 and 37, once again, relating non-functional descriptive material (the audible message) or to a non-structural aspect of an article (trademark associated with the package) does not further limit the structure of the package.

Re claims 7-14 and 38-46, Mallik, in paragraph [0018], does set forth a variety of audible sounds that may be produced by his package. These audible sounds include animal sounds.

Mallik does not disclose placing a feature on the package to correspond to the audible message.

The Examiner takes Official Notice that having a visual feature in the form of a "character" to correspond to an animal sound has been a ubiquitous in children's toys for decades. See for instance the Fisher Price toys that provide an animal sound that corresponds to a particular animal image.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide the package of Mallik with a visual feature in the form of a character to correspond to the (animal or other) sounds that he suggests. With respect to the particular (animal, etc.) sounds and particular (animal, cartoon, etc.) characters, these are all well known pairings from children's toys. Again, see for instance the Fisher Price toys that provide an animal sound that corresponds to a particular animal image. Accordingly, these pairings are all well known in the art, and their use would be obvious to one of ordinary skill in the art.

Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mallik et al. US 2002/0153273 in view of Marcus US 2,232,756.

Mallik does not disclose a clip on device attached to the slider.

Clip on devices attachable to the slider of zipper mechanisms have been known for decades to provide ornamentation. These teachings are, of course, analogous. Marcus teaches such a clip on device.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the slider of Mallik with ornamentation such as suggested by Marcus so as to enhance the aesthetic qualities of the slider. The device of Marcus, if used with slider of a package, would inherently provide amplification.

It is further recognized that the ornamentation of sliders in packages is also known. Tomic US 6,293,701 in Col. 8, lines 46-53, provides extrinsic evidence of this fact.

Allowable Subject Matter

The Examiner invites Mr. Hulseberg to schedule an interview to discuss allowable subject matter. The examiner believes that method claims will need to be

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drafted so as to set forth the subject matter of relating the audible message to a character in a manner that conveys patentable weight to this subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JBJ


Mickey Yu
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